IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 804 of 1999

with

Civil Applciation No.1243 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO.LTD

Versus

DILIP NANALAL JOSHI

Appearance:

MR KK NAIR for appellant

MR SURESH M SHAH for Respondents.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 22/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit, service of notice is waived by Mr. Mehul S. Shah for the respondents. At the joint request, the appeal is ordered to be heard finally today itself.

By this appeal, the appellant, original-opponent No.2, insurer, has assailed the legality and validity of the judgment and award rendered in Motor Accident Claim Petition No.5 of 1991 by the MACT (Aux), Kutch at Bhuj, whereby, the respondent No.1, living victim of violent accident came to be awarded an amount of Rs.4,71,500/- by way of compensation with running interest at the rate of 15 percent per annum, from the date of application till realisation with proportionate costs for tortious liability on the part of the driver of offending vehicle i.e. car bearing No.GQY-9150 which occurred at about 9.20 a.m. on 24.5.90 on Rapar-Nandsar Road in Kutch district, by invoking the aids of section 173 of the Motor Vehicles Act, 1988.

The factum of accident is no longer in controversy. The unfortunate victim of road accident being minor child about 10 years, at the relevant time, was a pedestrian, and therefore, there would not arise the question of even contributory negligence, as per the settled proposition of law. Unfortunate living victim of the violent road accident has sustained permanent partial disablement which has affected his psychological and physiological and even regular pursuits of life. For a long spell, he was kept in the hospital as an indoor patient for treatment. Thereafter, also, he has been undergoing periodical outdoor medical treatment in view of the serious impairment to his physical and mental health.

We have noticed in course of hearing while examining the documentary and 'vivo-voce' evidence from the record of the present case that the minor living victim had sustained serious head injuries and therefore, he was undergoing extensive treatment of neuro-surgeon in the Civil Hospital, at Ahmedabad. The victim had sustained depressed facture of Left Temporo parietal bone and his mental condition and health is, seriously, impaired. He has become a permanent sufferer of secondary mental retardation on account of the neurological disorder due to head injury. The medical certificate issued by Dr.Rao shows that the accidental injuries have resulted into permanent physical disablement to the extent of 45 percent and functional disabilities are permanent and total. Due to permanent disablement, the minor victim is

unable to understand properly and attend to his even the daily pursuits of life.

Dr.Rao has, clearly, testified, at Ex.132 before the Tribunal that the minor victim has become mentally very much crippled and he is not in a position to do any labour work, employment or any business as his psychological development and growth is substantially hampered and he found him like a child of mentally retarded below 5 years when he finally examined him. The evidence of Medical Officer Dr.Rao is quite trustworthy and therefore, rightly not seriously criticised. Incidentally, we may also place it on record that in course of hearing when we found the factual spectrum about the physical and mental condition of the victim, deplorable and painful, we also, thought it expedient to call the victim and see and ascertain the disablement and the mental impairment to the extent possible. Upon consensual request of the learned advocates appearing for the parties and therefore, the father of the victim brought him and we had seen him and thereafter in presence of lawyers in our Chamber questioned him to appreciate the extent of power of mental faculty and the understanding capacity. Unfortunately, we found that his mental retardation on account of the unfortunate road accident has brought untimely agonies in the prime of his youth. Even his matrimonial prospects are virtually diminished to a lowest level if not totally shut.

The Tribunal upon consideration of the evidence of victim, his father, medical officer and other testimonial collections and other evidence reached to the conclusion that the victim is entitled to an amount of Rs.4,71,500 by way of compensation under all the heads. The break-up is as follows:

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Rs.1,00,000 - For pain, shock and suffering.
Rs.  30,000 - For medical expenses.
Rs.   4,000 - For attendance charges.
Rs.3,37,500 - Under the head of prospective loss
       of earnings.
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Rs.4,71,500 - Total
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After having taken into consideration the overall factual profile, the extent of pain, shock and suffering and the permanent disablement and the extent of resultant neurological disorder affecting the full functional capacity of the victim, the future prospects and the family background in so far as the amount of

Rs.3,37,500/- awrded by the Tribunal under the head of future economic loss at the best could be reduced by Rs.37,500/- and an amount of Rs.3,00,000/- (Three lacs) under that head would be quite just and reasonable. In so far as the award under other heads is concerned, it requires no any interference. We may, also, state that the rate of interest awarded by the Tribunal is 15 per cent per annum from the date of application till the date of payment and the same is required to be reduced to 12 per cent per annum in view of the latest proposition of law expounded and propounded by catena of judicial pronouncements. Therefore, respondent No.1 claimant would be entitled to an amount of Rs.4,34,000/- (Rupees four lacs and thirty four thousand) instead of Rs.4,71,500/- with interest at the rate of 12 per cent per annum. The break-up of which is as follows:-

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Rs.1,00,000 - For pain, shock and suffering.
Rs.  30,000 - For medical expenses.
Rs.   4,000 - For attendance charges.
Rs.3,00,000- Under the head of prospective loss
 of earnings.
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Rs.4,34,000 - Total
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In the result, the appeal is partly allowed. The impugned judgment and award of the Tribunal shall stand modified to the aforesaid extent.

It is jointly, rightly, requested that the amount which is deposited by the Insurance Company before the Tribunal and amount which is transmitted pursuant to our order dated 21.4.99 in Civil Application shall be disbursed in terms of the aforesaid directions and shall be invested in terms of the directions issued by the Tribunal for the purpose of disbursement in the impugned judgment and award and the remaining amount if any, on the credit side shall be refunded to the appellant and if it is on the debit side, it shall be deposited by the Insurance company, within a period of eight weeks from today.

The Civil Application also stands disposed of. Rule made absolute to the aforesaid extent.

(J.N.Bhatt, J.)

(A.M.Kapadia, J.)
(vjn)